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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/524,217 | 09/14/2005 | Boris Adam | 10191/3723 | 1011 |
| 26646 7590 04/21/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004 | | | | |
| EXAMINER | | | | |
| SUGLO, JANET L | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2857 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 04/21/2008 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,217

Applicant(s)

ADAM ET AL.

Examiner

JANET L. SUGLO

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 6-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 08 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The action is responsive to the Amendment filed on February 1, 2008. Claims 6-10 are pending. Claims 1-5 have been cancelled. Claim 6 has been amended.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 6, 7, 9, and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Zumpano (US Patent 6,513,829) in view of Dirmeyer et al. (US Patent 5,748,075) (hereinafter Dirmeyer).

With respect to **claim 6**, Zumpano teaches a device for impact sensing (Zumpano: col 10, ln 52-67), comprising:

a processor (Zumpano: col 10, ln 63-65); and

at least two pressure sensors each detecting an impact to a vehicle based on pressure, wherein the at least two pressure sensors connectable to the processor to communicate at least one pressure value each to the processor, the processor being

configured to perform an impact sensing based on the at least one pressure value (Zumpano: Figure 1; col 5, ln 46-55; col 10, ln 52-67);

wherein the processor is connectable to at least one additional vehicle system to transmit the at least one pressure value to the at least one additional vehicle system (Zumpano: col 13, ln 63-65).

Zumpano does not expressly teach that the pressure sensors detect an impact based on adiabatic pressure increase. Dirmeyer teaches using pressure sensors which detect adiabatic pressure increases to detect side impact *to a vehicle* (Dirmeyer: abstract, col 4, ln 60-62). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Zumpano to include the pressure sensors based on adiabatic pressure increases of Dirmeyer because these sensors will ensure that only serious accidents will cause the passenger protection system to tripped (Dirmeyer: col 4, ln 1-5).

With respect to **claim 7**, Zumpano further teaches the at least one vehicle system is an injection system (i.e., inflation system injects air into inflatable members) (Zumpano: col 14, ln 13-24).

With respect to **claim 9**, Zumpano further teaches the at least one vehicle system is configured to control its function as a function of the at least one pressure value (Zumpano: col 14, ln 1-12).

With respect to **claim 10**, Zumpano further teaches the at least one pressure value is a differential pressure value (Zumpano: col 12, ln 59-67).

4. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Zumpano (US Patent 6,513,829) in view of Dirmeyer et al. (US Patent 5,748,075) (hereinafter Dirmeyer) and further in view of Bohner et al. (US Patent 6,269,903) (hereinafter "Bohner"). Zumpano and Dirmeyer teach all limitations of parent claim 6 as shown above, but do not expressly teach plausibility checking. Bohner teaches plausibility checking on pressure sensor values (Bohner: col 8, ln 1-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Zumpano to include the plausibility checking of Bohner because this will ensure proper functioning of the pressure sensors (Bohner: col 7, ln 61-63) and ensure that the system is functioning during emergency situations (Bohner: col 2, ln 5-7).

Response to Arguments

5. Applicant's arguments filed February 1, 2008 have been fully considered but they are not persuasive.

Applicant argues in the fifth paragraph of page 3 of remarks filed February 1, 2008 that Zumpano does not teach "at least two pressure sensors each detecting an impact to a vehicle;" however, Applicant's arguments are not well taken. Applicant argues that Zumpano teaches detecting pressure "inside a plurality of internally

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disposed chambers within each of the inflatable members" (Zumpano, col 5, ln 24-26). However Applicant further quotes Zumpano in col 5, ln 46-55, which states in part "at least one of a plurality of impact sensors [that is] located on the vehicle and connected to the.. processor [and] communicates in micro-seconds the occurrence of an impact of sufficient predetermined force to possibly cause injury to the occupant within the passenger compartment." These impact sensors detect a pressure value representing an impact to a vehicle as stated in the above passage and further described in Zumpano at col 13, ln 5-10. Therefore Zumpano teaches at least two pressure sensors each detecting an impact to a vehicle. Further, if the pressure sensors represent the pressure sensors in the claim limitations instead of the impact sensors, they still fulfill the limitation of detecting an impact to a vehicle as the detection of a pressure within the chambers of the inflatable members is still the detection of an impact to the vehicle. The inflatable members are a part of the vehicle and thus when the pressure within the inflatable member is impacted, the vehicle by default also impacted. Even if an impact is within the vehicle as the result of the movement of an occupant of the vehicle, it is still an impact to the vehicle as the occupant is impacting the inflatable member of the vehicle. Further, even if the argument is made the Zumpano does not teach this limitation, Dirmeyer teaches pressure sensors that sense an impact to a vehicle as supported by Dirmeyer at the abstract and col 4, ln 60-62, Applicant further admits that Dirmeyer "may refer to pressure sensors that sense an impact to a vehicle" in the second paragraph of page 4 of his arguments.

Applicant argues that the sensors of Zumpano "are not connectable to a processor in which the processor is connectable to at least one vehicle system besides said two pressure sensors to transmit the at least one pressure value to the at least one vehicle system;" however, Applicant's arguments are not well taken. As shown in the previous rejection and in the rejection above Zumpano teaches the processor is connectable to at least one additional vehicle system to transmit the at least one pressure value to the at least one additional vehicle system (Zumpano: Figures 1 and 2; col 10, ln 52-67; col 13, ln 63-65). As shown in the above excerpts of Zumpano, Zumpano teaches sending the pressure value to an opposing inflatable member which is a vehicle system besides said two pressure sensors.

Furthermore, as stated in MPEP 2114:

APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims<directed to>an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

Zumpano teaches the structure capable of carrying out the function given in the apparatus claim 1. The claim further states that the "processor is *connectable* to at least one vehicle system" [emphasis added] further supporting the argument that the

function is not claimed only that it is a possibility and capability. The apparatus must be capable of carrying out the function, but the functionality does not distinguish the claim from the prior art. As shown in the above rejection of claim 1, Zumpano teaches the structural limitations of claim 1.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JANET L. SUGLO whose telephone number is (571)272-8584. The examiner can normally be reached on Mon, Wed, Thur, Fri from 6:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on 571-272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JANET L SUGLO/
Examiner, Art Unit 2857

/Eliseo Ramos-Feliciano/
Supervisory Patent Examiner, Art Unit 2857